



Senate

General Assembly

February Session, 2012

File No. 12

Senate Bill No. 60

Senate, March 6, 2012

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective from passage*) (a) For purposes of this
2 section, "consumer goods and services" means goods and services that
3 are vital and necessary for the health, safety or welfare of consumers
4 and are used, bought or rendered primarily for personal, family or
5 household purposes, including, but not limited to, the provision of
6 lodging, snow removal, flood abatement and post-storm cleanup or
7 repair services.

8 (b) In the event that adverse weather conditions create an unusually
9 high demand for consumer goods and services, the Governor may
10 proclaim that a severe weather event emergency exists. Upon the
11 proclamation of such emergency, the Governor shall post notice of
12 such proclamation on the home page of the Internet web site of the
13 office of the Governor. Upon determining that such severe weather
14 event emergency has ended, the Governor shall post the end date of

15 such emergency on such web site.

16 (c) During such severe weather event emergency, no person within
17 the chain of distribution of consumer goods and services shall sell or
18 offer to sell consumer goods or services for a price that is
19 unconscionably excessive.

20 (d) (1) A determination that a violation of subsection (c) of this
21 section has occurred shall be based, among other factors, on the
22 following: (A) That the price for which consumer goods and services
23 were sold or offered to be sold was unconscionably excessive, (B) that
24 there was an exercise of unfair leverage or unconscionable means, or
25 (C) a combination of both factors in subparagraphs (A) and (B) of this
26 subdivision.

27 (2) Evidence that: (A) The price for which consumer goods and
28 services were sold or offered to be sold represents a gross disparity
29 between the price of the goods or services that were the subject of the
30 transaction and their value measured by the average price at which
31 such consumer goods or services were sold or offered to be sold by the
32 defendant in the usual course of business during the thirty-day period
33 prior to a severe weather event proclamation made by the Governor
34 pursuant to subsection (b) of this section, or (B) the price for which
35 consumer goods and services were sold or offered to be sold grossly
36 exceeded the price at which the same or similar goods or services were
37 readily obtainable by other consumers in the trade area shall constitute
38 prima facie evidence that the price is unconscionably excessive. A
39 defendant may rebut a prima facie case with evidence that additional
40 costs not within the control of the defendant were imposed on the
41 defendant for such goods or services.

42 (e) A seller of an energy resource, as defined in subsection (a) of
43 section 42-234 of the general statutes, shall be exempt from the
44 provisions of this section.

45 (f) A violation of subsection (c) of this section shall constitute an
46 unfair trade or deceptive practice under subsection (a) of section 42-

47 110b of the general statutes.

48 (g) Each violation and each day on which the violation occurs or
49 continues shall be a separate offense.

50 (h) The provisions of this section shall not be construed to limit the
51 ability of the Commissioner of Consumer Protection or the court from
52 finding certain acts or practices unfair or deceptive pursuant to chapter
53 735a of the general statutes in the absence of a severe weather event
54 emergency proclamation made by the Governor pursuant to
55 subsection (b) of this section.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

GL *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

There is no fiscal impact to the Department of Consumer Protection in prohibiting price gouging during severe weather events, as the agency currently receives and acts upon such complaints.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**SB 60*****AN ACT PROHIBITING PRICE GOUGING DURING SEVERE WEATHER EVENTS.*****SUMMARY:**

This bill bars excessive price increases for goods and services in circumstances the governor proclaims to be a severe weather event. It expands current law which prohibits price gouging for (1) products under a civil preparedness emergency declaration, (2) products and services under a supply emergency declaration, and (3) energy resources during abnormal market disruptions.

During a severe weather event, no person can sell or offer to sell any goods or services for an “unconscionably excessive price.” Under the bill, whether a price is unconscionably excessive is based on several factors, which a defendant may rebut with evidence that additional costs out of his or her control were imposed on the defendant for the goods or services.

A violation is an unfair trade or deceptive practice. Each day on which the violation occurs or continues is a separate offense.

EFFECTIVE DATE: Upon passage

SEVERE WEATHER EVENT

Under the bill, the governor may proclaim a severe weather event emergency exists when adverse weather conditions create an unusually high demand for consumer goods or services. To make a proclamation, the governor must post a notice on his website, including the event's start and later, its end date. Current law authorizes the governor to proclaim a civil preparedness or supply emergency.

PRICE GOUGING

During a severe weather event, no person in the distribution chain of consumer goods or services can sell or offer to sell any goods or services for an unconscionably excessive price. Consumer goods and services are those vital and necessary for consumer health, safety, or welfare and are used, bought, or rendered primarily for personal, family, or household purposes, including lodging, snow removal, flood abatement, and post-storm cleanup or repair services. The bill excludes energy resource sellers (e.g. gasoline), who are covered under a separate price gouging law.

The bill does not specify who determines whether a price is unconscionably excessive, but the Department of Consumer Protection (DCP) commissioner and the court are authorized to impose penalties based on their findings. They must consider whether: (1) the price was unconscionably excessive, (2) there was unfair leverage or unconscionable means, or (3) a combination of these factors.

Under the bill, prima facie evidence of excessive pricing is (1) a gross disparity between the price of the goods or services and their value measured by the average price 30 days before the severe weather event or (2) evidence that the price grossly exceeded the price at which the same or similar goods or services were readily obtainable by other consumers in the trade area.

Prima facie evidence is defined as evidence that will establish a fact or sustain a judgment unless contradictory evidence is produced (*Black's Law Dictionary*, 7th ed.). Under the bill, a defendant may challenge or rebut a prima facie case with evidence that additional costs out of his or her control were imposed on the defendant for the goods or services.

By law, the DCP commissioner and the courts are authorized to make findings of unfair or deceptive practices. The bill specifies that it does not limit this authority only to circumstances or complaints under a governor's severe weather event emergency proclamation.

BACKGROUND***Price Gouging Law***

The law prohibits anyone from increasing the retail price of any goods, but not services, when the governor issues a disaster or transportation emergency declaration or the U.S. president issues any major disaster or emergency declaration (CGS § 42-230).

The governor is authorized to proclaim a state of civil preparedness emergency in the event of a serious disaster. Such a proclamation is in effect when filed with the secretary of the state and the governor's expanded powers continue until he proclaims an end to the emergency (CGS § 28-9).

Supply Emergency

In the event of a state-wide, regional, or threatened shortage of a product or service because of an abnormal market disruption, the governor may proclaim a supply emergency exists. He may then designate a product or service to be in short supply and impose price restrictions or ration them (CGS § 42-231).

Under a supply emergency, no one can sell or offer to sell a product or service at a price higher than it was sold or offered in the course of business just before the declaration (CGS § 42-232).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for a willful violation and \$25,000 for violation of a restraining order.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 1 (02/23/2012)